

**MINUTES
of the
SIXTH MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**November 24-25, 2008
Room 322, State Capitol
Santa Fe**

The sixth meeting of the Water and Natural Resources Committee was called to order at 8:04 a.m. on November 24, 2008 by Representative Andy Nuñez, chair.

Present

Rep. Andy Nuñez, Chair
Sen. Phil A. Griego, Vice Chair
Rep. Paul C. Bandy
Rep. Elias Barela (Nov. 24)
Sen. Sue Wilson Beffort (Nov. 24)
Rep. Ray Begaye
Rep. Joseph Cervantes
Sen. Dede Feldman
Sen. Mary Jane M. Garcia
Sen. Clinton D. Harden, Jr.
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Rep. Kathy A. McCoy
Sen. Steven P. Neville
Sen. Mary Kay Papen
Rep. Mimi Stewart
Rep. Don L. Tripp

Absent

Sen. Cynthia Nava

Advisory Members

Sen. Rod Adair
Sen. Vernon D. Asbill
Sen. Carlos R. Cisneros
Rep. Nora Espinoza
Rep. Candy Spence Ezzell
Rep. Ben Lujan
Rep. James Roger Madalena (Nov. 24)
Sen. Cisco McSorley
Rep. Danice Picraux (Nov. 25)
Sen. Nancy Rodriguez
Rep. Peter Wirth (Nov. 24)

Rep. Anna M. Crook
Sen. Timothy Z. Jennings
Sen. Gay G. Kernan
Sen. Leonard Lee Rawson
Sen. John C. Ryan
Rep. Henry Kiki Saavedra
Rep. James R. J. Strickler
Rep. Eric A. Youngberg

(Attendance dates are noted for those members not present for the entire meeting.)

Guest Legislators

Rep. Thomas A. Garcia

Rep. Joni M. Gutierrez

Rep. Jimmie C. Hall

Sen. Richard C. Martinez

Rep. Debbie A. Rodella

Rep. Jim R. Trujillo

Rep. Jeannette O. Wallace

Staff

Gordon Meeks

Jon Boller

Jeret Fleetwood

Guests

The guest list is in the original meeting file.

Monday, November 24

Regulation of Propane Suppliers

Robert Rivera, lobbyist, explained utility regulation and the differences between utilities and the propane industry. He then introduced Baron Glassgow, executive director of the New Mexico Propane Gas Association, who summarized the 2007 memorials asking for studies of propane sales issues. At the request of Senator Griego, he said that 2008 has been the most volatile year for pricing in the industry's history. He told the committee that there are 60 propane companies in New Mexico with 120 retail stores. He explained that customers have been complaining that propane prices were high even though the price of oil, from which propane is derived, has been declining. He said that this is a function of the contract requirements for wholesale propane to which all the retailers are subject. The highest price at the wholesale level for propane in 2008 occurred in July, which is when the retailers have to contract for their winter supplies. Hence, the prices prevailing in July were passed on to the customers in the wintertime, when customers saw the price of oil declining. Each propane company has its own relationship with its wholesale supplier, and because it is a competitive market, the propane dealers do not share information on their prices with one another. In fact, he said, the association prohibits discussing prices at its meetings.

Mr. Glassgow said that the industry tries to be proactive in explaining energy issues to customers. For example, the association published information on the federal Low Income Home Energy Assistance Program (LIHEAP). He went on to say that tank leasing contracts are a difficult issue. Customers want to be able to buy gas from any dealer, but a customer who rents a tank from a dealer is required to buy gas from that dealer because the liability insurance of the

dealer requires the owner of the tank to have the tank filled only by that dealer. If a customer chooses to replace that tank with one from another dealer, the state's Construction Industries Division's Liquefied Petroleum Gas Bureau requires an inspection and upgrades in connections if they no longer meet the building code requirements. These can be expensive, but the propane industry is not trying to gouge the customer. He also said that delivery costs to customers can affect their costs.

Paul Pacheco, a propane retailer from Pecos, told the committee that he cannot make a profit delivering propane more than 50 miles away, which is true for other propane retailers as well. The retailers simply will not sell beyond that radius from their stores. Some customers perceive that as collusion, or as non-compete agreements, when it is really the simple economics of the business. He explained the details of his business, including the fluctuation of prices between \$.20 and \$.30. He explained that he has to pay the wholesaler within 10 days of delivery of his propane, and if his customers don't pay him, he is out of business. He said he competes with eight other propane sellers.

Ray Engstrom, a service provider and former Liquefied Petroleum Gas Bureau chief at the Construction Industries Division, explained that over the years, underground pipes can become corroded and any change in a propane dealer can result in requiring repairs to those pipes, which can be very expensive.

Questions and comments addressed:

- gaps in service when customers live between dealers that are each more than 50 miles away;
- details of inspection requirements;
- propane sellers' loyalty to and preference for regular customers;
- the danger to customers if propane dealers and tanks are changed without a pressure test;
- weather-related customer complaints, such as inability of dealers to receive wholesale deliveries, limitations on drivers' hours under federal law and snow blocking driveways;
- potential for "cooperation" among propane dealers;
- the price of propane at the rack being different among propane retailers;
- spot market purchases compared to futures;
- the benefits of free market competition in the propane industry;
- price notifications to customers;
- variable pricing to different customers;
- self-regulation; and
- amortization of tanks for purchase.

Betty Hagensted, a citizen from Ojo Caliente, testified that a lot of problems are associated with one propane company, but that other propane companies could do the same thing without regulation by the state. She said that different prices by the same company for different

customers is discrimination. She demanded some kind of oversight by the state. She said that LIHEAP is nice, but it does not cover many of the costs charged by propane companies.

Pilar Faulkner, also from Ojo Caliente, echoed these concerns and said that the propane industry acts like an unregulated monopoly.

Acequia Issues

Paula Garcia, director of the New Mexico Acequia Association, told the committee that her organization opposes the licensure bill proposed by the state engineer and opposes legislation that would mandate that water rights owners file notices of claims. She testified that the concerns relate to due process, compromising the authority of the courts, the separation of powers and the disenfranchisement of water rights owners. She told the committee, however, that the association supports limitations of municipal eminent domain powers and increased funding for the Acequia and Community Ditch Fund.

Her organization is very concerned about active water resource management rules and the power given to water masters. She said that expedited water markets in the Mimbres Valley are circumventing the water adjudication process.

Questions and comments addressed:

- the extent and variety of eminent domain authorities;
- the dateline for potential mandatory notices of claims; and
- the role and rights of parcientes compared to the acequias and acequia associations.

Governor's Outstanding National Resource Waters Initiative

Marcy Leavitt and John Goldstein from the Department of Environment addressed the committee about the Water Quality Control Commission designating outstanding national resource waters for special protection from degradation under the state's antidegradation policy and the federal Clean Water Act. Existing waters with such designations are the Rio Santa Barbara in the Pecos wilderness and waters in the Valle Vidal Special Management Unit of the United States Forest Service. Designation means enhanced regulations of point sources of effluent discharge (such as wastewater and oil and gas and mining discharges) and best management practices for nonpoint source discharges (such as grazing, recreational uses, septic tank seepage and agricultural runoff). Designation of the new status will involve public hearings and ample opportunity for public comment.

Questions and comments from the committee addressed:

- permit conditions under the new designations;
- Forest Guardians' role in the policy;
- a hidden goal to eliminate grazing from public lands;
- ranchers' roles in watering wildlife;
- the effect on forest thinning;
- economic impacts and implications;

- the hostile regulatory environment;
- layers of bureaucracy;
- wildlife refuges;
- definitions of nonpoint sources;
- dairies in Dona Ana County;
- the degradation of water quality caused by elk overpopulation;
- the role of the Department of Game and Fish;
- a request to work with farmers and ranchers;
- counties' authority in regulating dairies;
- the role of land grants in designation of outstanding national resource waters;
- an invitation to attend and speak at the Cattle Growers Association's annual meeting;
- the role of the Department of Agriculture in selecting outstanding national resource waters;
- the differences between point source and nonpoint source discharges;
- the citation for existing rules on outstanding national resource waters, 20.6.4 C.A.R.; and
- how poisoning of invasive species relates to nondegradation of waters in the Valle Vidal.

A spokesperson from the audience said the United States Forest Service does not endorse the initiative.

The committee approved the minutes from the September and October meetings.

Off-Highway Motor Vehicle Act Amendments

Reese Fullerton, deputy secretary of energy, minerals and natural resources, gave the committee a status report on the implementation of Senate Joint Memorial 40, which requested the Energy, Minerals and Natural Resources Department to review issues related to off-highway motor vehicle (OHV) use. He said that OHV use is an issue nationwide because such vehicles now number more than 12 million as compared to three million in 1986. He testified that five state agencies participated in a working group to review the law and no conclusions have been reached yet. The working group is still meeting and hopes to have some recommendations in time to be considered during the regular session. He emphasized that any changes in the law, in order to be successful, must be supported by a consensus of stakeholders.

He told the committee that the primary issues are:

1. user conflicts;
2. enforcement and monitoring of OHVs obeying designated trails;
3. damage to natural resources;
4. safety (OHVs are involved in 50 percent more injuries to users than any other type of vehicle); and
5. lack of dedicated use areas.

Questions and comments from the committee dealt with:

- funding for the study;
- recommendations to the United States Forest Service for its travel management plans;
- primary components of proposed legislation;
- threats from OHV enthusiasts;
- the Tourism Department's advertisements promoting OHV tourism without public education promoting respect for natural resources and agricultural users;
- the purpose of the existing Off-Highway Motor Vehicle Act;
- damage to the paleozoic track near Las Cruces from OHVs; and
- state agency partners with some authority over OHVs.

Invasive Species Impact on Water Systems

Brian Long, Department of Game and Fish , and Dave Moore, International Game Fish Association, told the committee about potential threats from aquatic invasive species, mainly the zebra mussel. They said that a rigorous boat inspection program and public education are needed to inform the public about how important it is to make sure that boats are adequately cleaned. They said that eastern states are already infested, and the states surrounding New Mexico have reported colonization by zebra mussels in some of their water bodies. Boating marinas are supporting a more active role by state government, but there is limited funding. State agencies involved in monitoring the situation and gearing up to respond include the New Mexico Department of Agriculture, the Department of Public Safety, the Department of Game and Fish and the State Parks Division of the Energy, Minerals and Natural Resources Department.

Questions and comments addressed:

- the methods of introduction of exotic species;
- the methods and protocols for boat inspections;
- the consequences of colonization by zebra mussels;
- that this is a public education issue, not just a law enforcement issue;
- the effect on recreationists, including rafters and motor boaters;
- laws in Arizona, California, Colorado, Nevada and Utah;
- the degree of infestations in the eastern United States;
- animal vectors, birds and mammals;
- golden algae blooms;
- time constraints on transportation;
- the origin from freighters in the Great Lakes;
- the nature of eradication efforts;
- the model program in Minnesota, where only four lakes are affected;
- how Phoenix is draining all the area irrigation systems; and
- the funding request level, which is between \$2 million and \$4 million.

Game and Forest Management Impacts

Tod Stevenson, director of the Department of Game and Fish, addressed the committee concerning elk issues. He is confident that the department's hunting rules and opportunities are

consistent within elk management units. He said many of the issues are ones of perception; the department manages individual management units differently depending on habitat conditions and specific elk populations. Hunters or landowners may perceive inconsistencies, but the department is managing the herds based on those varying conditions between management units. He said that regarding depredation compensation, large ranches are easier to make decisions about compared to small ranches, which are managed differently and may have very different needs and varying degrees of wildlife damage. The number of authorizations between different management units may seem inequitable, but the management rationale is based on biology. The next State Game Commission meeting may include consideration of changes in managing Unit 6, which is a particular dilemma. Small landowners in the unit may opt out of the program, he said, if a longer hunting season is allowed. He said that the department will be coming to the legislature with a proposed change in the depredation law.

Art Martinez, an outfitter, told the committee that there have been problems in the Cuba/Coyote/Gallina area since 2001. He said those issues were brought to the State Game Commission in 2006. He testified that the Department of Game and Fish has increased the hunting allotments for large landowners and reduced the authorizations for small landowners. The small landowners do not want the elk killed off. He said that small landowner permits were reduced in value by Department of Game and Fish decisions. He told the committee that the department told him that it is not in business to repay landowners. He itemized his complaints by saying that 70 percent of the permits in Unit 6C went to the two largest landowners and that the small landowners' permits were collectively reduced from 16 to only two permits this year. He described the problems in Unit A where one area of 6,000 acres received 74 tags while another area of 5,000 acres only received 6 permits. He said that another area of more than 3,000 acres was getting 44 permits, but it consists of rangeland and no cropland. It is the cropland that sustains the most damage and, therefore, should get more tags. He said that a herd of elk feeding on cultivated cropland can wipe a farm family out, but compensation and hunting tags and permits go to big ranches that have no cultivated acres and no forage damage. The Department of Game and Fish will not even inspect claims by small landowners in Unit 6C. He said that Unit 6 should be reconsolidated. Landowners in Unit 6 have held public meetings and have petitioned the State Game Commission, but they have been "totally ignored". He said that the department should investigate damage claims and the director should be elected. He also called for a change in the law to provide for election of the state game commissioners because they are not currently accountable.

Mr. Stevenson rebutted Mr. Martinez by saying that there are diverse voices on elk issues; that the hunting strategy to reduce the elk population is a result of many voices from other populations; and that cooperation from the United States Forest Service has been slow.

Questions and comments from the committee addressed:

- Chama issues;
- the lack of responsiveness from the Department of Game and Fish;
- how the Department of Game and Fish determines game population in a particular

- unit;
- hunting license rules;
- how state wildlife eating private forage can set the state up for large class action lawsuits;
- that landowner permits should be issued in proportion to depredation;
- a review of the law for changes;
- how the formula for allocation of landowner permits is too complicated;
- the timing of landowner permits based on the time of depredation;
- compensation for use of grass on federal allotments;
- the history of livestock law and takings as split title;
- the consideration of federal allotments for hunting permit tags;
- the need for conjunctive management of elk with federal public lands grazing policy;
- the rationale for issuing hunting tags;
- tags for land grants;
- the membership of the State Game Commission;
- a direct request from legislators to the director of the Department of Game and Fish and the State Game Commission to listen to landowners;
- the source of rules for the game depredation program;
- the splitting of units in Canjilon;
- rotting carcasses;
- the potential to dedicate hunting and fishing license revenues to the general fund and to budget Department of Game and Fish operations from the general fund through House Bill 2;
- the arbitrariness and capriciousness of game and fish rules;
- how much of the rulemaking is specifically authorized by statute and how much is exceeding statutory authority; and
- specific directions from committee members to the Department of Game and Fish to meet with small landowners and threat to remove revenue stream if the department does not adequately respond.

The public comment period was dominated by general criticism of the department from two citizens.

Tuesday, November 25

Proposed Legislation (Approved Legislation Provided in Appendix)

The committee endorsed legislation to:

- appropriate money to the Interstate Stream Commission for water planning;
- appropriate money to New Mexico State University for water quality research;
- appropriate money to New Mexico Highlands University's Forest and Watershed Restoration Institute;
- appropriate money to New Mexico Tech's Bureau of Geology and Mineral Resources for aquifer mapping;

- establish the Water and Wastewater System Management Assistance Fund;
- establish the Liquid Waste Disposal System Assistance Fund;
- appropriate money to New Mexico State University for a veterinary program;
- increase the state engineer's authority over dams;
- limit eminent domain authority of municipalities in water rights acquisitions;
- create a lower Rio Grande water authority;
- request through a memorial that New Mexico State University report its research on reducing water consumption; and
- extend the state engineer's authority to ground water below 2,500 feet.

The committee tabled a proposal to enhance the state engineer's licensing authority and legislation to move forward on adjudication reform.

New Mexico Renewable Energy Transmission Authority

Lisa Szot, executive director, New Mexico Renewable Energy Transmission Authority (NMRETA), and Ted Apodaca, general counsel, NMRETA, gave a status report on the actions of the authority and asked the committee to support legislation to allow the NMRETA to issue bonds to finance its projects and to provide developers of transmission lines with the same tax benefits given to electric power generators. Ms. Szot also asked the committee to support legislation to allow the State Investment Council and the state treasurer to buy the authority bonds.

Questions and comments to the committee addressed:

- the federal Energy Regulatory Commission's responsibility for transmission line regulation and the state's authority; and
- the effect of speculation on commodity prices and, therefore, the price of electric power.

Water Conservation Initiatives

John Longworth, bureau chief for water conservation in the Office of the State Engineer, described his bureau's responsibilities and gave a status report on various activities. He said that his bureau has prepared a rainwater harvesting manual, a web-based low-water plant list, a residential irrigation calculator and a DVD on how to irrigate landscapes. The bureau sponsors training and certifications for landscapers and irrigation specialists and cooperates with New Mexico State University on research projects related to evapotranspiration. The bureau also reviews water development and conservation planning, analyzes water systems for leaks, provides leak detection monitoring and conducts water demand analyses. The bureau staffed the House Memorial 42 stakeholder meetings and reviewed the 40-year planning law and proposed changes to the 40-year time period. Nine public meetings have been held so far, but no consensus has been reached. The stakeholders have drafted a consensus memo, which they believe needs to be distributed to the broader public for review and comment.

Committee questions and comments focused on web site information on appropriate

climate and weather conditions for irrigation.

Valles Caldera National Preserve Management Status

Bill Kelleher, board chair of the Valles Caldera National Preserve, and Dennis Trujillo, preserve manager, told the committee that they want to ask the legislature to support a change in the Department of Game and Fish statutes to provide for 20 landowner permits to hunt in the Valles Caldera preserve. They said that the preserve is required by federal law to raise enough revenue to sustain its operations and that this revenue would be of significant assistance in accomplishing that requirement. They said they could expect as much as \$100,000 per hunt to be raised in this way, similar to the revenue the White Mountain Apache Tribe receives for high-dollar hunts in its game operations. Bob Jenks of the Department of Game and Fish was present and told the committee that the department supports the request.

Questions and comments from the committee addressed:

- the potential for the preserve to become a Class A park;
- the attorney general's opinion on ownership and wildlife laws of the state;
- the number of hunting permits currently issued for lottery hunts in the Valles Caldera;
- facilities for overnight accommodations;
- road infrastructure on the preserve;
- the number of guided hunts and outfitters operating on the preserve;
- the condition of the lodge;
- the economics of the cattle operations on the preserve;
- preferential times or places for hunts; and
- the economic burden of the preserve, with its excess elk depredation, to adjacent landowners and farmers.

The committee adjourned at 3:45 p.m.